

**** Bill No. ****

Introduced By *****

By Request of the *****

A Bill for an Act entitled: "An Act ; and providing an applicability date."

WHEREAS, it is the policy of this state to encourage the wise use of the state's water resources by making them available for appropriation, and to provide wise utilization, development and conservation of the water of the state for the maximum benefit of its people with the least possible degradation of the natural aquatic ecosystems; and

WHEREAS, there has been confusion regarding groundwater issues in closed basins and the Department of Natural Resources and Conservation needs guidance from the Legislature on how to proceed; and

WHEREAS, the basin closure laws were passed to protect senior appropriators, who should not be forced to spend resources defending their senior water right; and

WHEREAS, groundwater development in closed basins should be able to proceed so long as the applicant collects the necessary scientific information to determine if there will be an adverse affect to a prior appropriator and takes the necessary actions to mitigate or present any adverse affect to a prior appropriator; and

WHEREAS, water quality and water quantity must be considered

when developing alternatives to allow for water use in basins that are currently closed to new appropriation; and

WHEREAS, it is critical that the legislature develop state water policies in a way that protects the prior appropriation doctrine while at the same time protecting the quality of Montana's water and the ability to appropriate water consistent with 85-1-101 and Article IX, section 3 of the Montana Constitution.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 85-2-102, MCA, is amended to read:

"85-2-102. (Temporary) Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

- (1) "Appropriate" means:
 - (a) to divert, impound, or withdraw, including by stock for stock water, a quantity of water for a beneficial use;
 - (b) in the case of a public agency, to reserve water in accordance with 85-2-316;
 - (c) in the case of the department of fish, wildlife, and parks, to lease water in accordance with 85-2-436; or
 - (d) temporary changes or leases for instream flow to maintain or enhance instream flow to benefit the fishery resource in accordance with 85-2-408; or
 - (e) the use of water for aquifer recharge or mitigation as

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provided in [sections 14 and 15].

(2) "Aquifer recharge" means either controlled subsurface addition of water directly to the aquifer or controlled application of water to the ground surface for the purpose of replenishing the aquifer.

~~(2)~~(3) "Beneficial use", unless otherwise provided, means:

(a) a use of water for the benefit of the appropriator, other persons, or the public, including but not limited to agricultural, ~~(including stock water)~~, domestic, fish and wildlife, industrial, irrigation, mining, municipal, power, and recreational uses;

(b) a use of water appropriated by the department for the state water leasing program under 85-2-141 and of water leased under a valid lease issued by the department under 85-2-141;

(c) a use of water by the department of fish, wildlife, and parks pursuant to a lease authorized under 85-2-436; or

(d) a use of water through a temporary change in appropriation right or lease to enhance instream flow to benefit the fishery resource in accordance with 85-2-408; or

(e) a use of water for aquifer recharge or mitigation as provided in [sections 14 and 15].

~~(3)~~(4) "Certificate" means a certificate of water right issued by the department.

~~(4)~~(5) "Change in appropriation right" means a change in the place of diversion, the place of use, the purpose of use, or the place of storage.

~~(5)~~(6) "Commission" means the fish, wildlife, and parks

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commission provided for in 2-15-3402.

~~(6)~~(7) "Correct and complete" means that the information required to be submitted conforms to the standard of substantial credible information and that all of the necessary parts of the form requiring the information have been filled in with the required information.

~~(7)~~(8) "Declaration" means the declaration of an existing right filed with the department under section 8, Chapter 452, Laws of 1973.

~~(8)~~(9) "Department" means the department of natural resources and conservation provided for in Title 2, chapter 15, part 33.

~~(9)~~(10) "Developed spring" means any artificial opening or excavation in the ground, however made, including any physical alteration at the point of discharge regardless of whether it results in any increase in the yield of ground water, from which ground water is sought or can be obtained or through which it flows under natural pressures or is artificially withdrawn.

~~(10)~~(11) "Existing right" or "existing water right" means a right to the use of water that would be protected under the law as it existed prior to July 1, 1973. The term includes federal non-Indian and Indian reserved water rights created under federal law and water rights created under state law.

~~(11)~~(12) "Ground water" means any water that is beneath the ground surface.

~~(12)~~(13) "Late claim" means a claim to an existing right forfeited pursuant to the conclusive presumption of abandonment

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under 85-2-226.

(14) "Mitigation" means the reallocation of surface water or ground water through a change in appropriation right or other means that does not result in surface water being introduced into an aquifer through aquifer recharge to offset an adverse effect to a senior appropriator resulting from a new appropriation right or a change in appropriation right.

(15) "Municipality" means an incorporated city or town in the state organized and incorporated under Title 7, chapter 2.

~~(13)~~ (16) "Permit" means the permit to appropriate issued by the department under 85-2-301 through 85-2-303 and 85-2-306 through 85-2-314.

~~(14)~~ (17) "Person" means an individual, association, partnership, corporation, state agency, political subdivision, the United States or any agency of the United States, or any other entity.

~~(15)~~ (18) (a) "Political subdivision" means any county, incorporated city or town, public corporation, or district created pursuant to state law or other public body of the state empowered to appropriate water.

(b) The term does not mean a private corporation, association, or group.

~~(16)~~ (19) "Salvage" means to make water available for beneficial use from an existing valid appropriation through application of water-saving methods.

~~(17)~~ (20) "State water reservation" means a water right created under state law after July 1, 1973, that reserves water

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for existing or future beneficial uses or that maintains a minimum flow, level, or quality of water throughout the year or at periods or for defined lengths of time.

~~(18)~~(21) "Substantial credible information" means probable, believable facts sufficient to support a reasonable legal theory upon which the department should proceed with the action requested by the person providing the information.

~~(19)~~(22) "Waste" means the unreasonable loss of water through the design or negligent operation of an appropriation or water distribution facility or the application of water to anything but a beneficial use.

~~(20)~~(23) "Water" means all water of the state, surface and subsurface, regardless of its character or manner of occurrence, including but not limited to geothermal water, diffuse surface water, and sewage effluent.

~~(21)~~(24) "Water division" means a drainage basin as defined in 3-7-102.

~~(22)~~(25) "Water judge" means a judge as provided for in Title 3, chapter 7.

~~(23)~~(26) "Water master" means a master as provided for in Title 3, chapter 7.

~~(24)~~(27) "Watercourse" means any naturally occurring stream or river from which water is diverted for beneficial uses. It does not include ditches, culverts, or other constructed waterways.

~~(25)~~(28) "Well" means any artificial opening or excavation in the ground, however made, by which ground water is sought or

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can be obtained or through which it flows under natural pressures or is artificially withdrawn. (Terminates June 30, 2009--sec. 9, Ch. 123, L. 1999.)

85-2-102. (Effective July 1, 2009) Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Appropriate" means:

(a) to divert, impound, or withdraw, including by stock for stock water, a quantity of water for a beneficial use;

(b) in the case of a public agency, to reserve water in accordance with 85-2-316; or

(c) temporary changes or leases for instream flow to maintain or enhance instream flow to benefit the fishery resource in accordance with 85-2-408; or

(d) the use of water for aquifer recharge or mitigation as provided in [sections 14 and 15].

(2) "Aquifer recharge" means either controlled subsurface addition of water directly to the aquifer or controlled application of water to the ground surface for the purpose of replenishing the aquifer.

~~(2)~~(3) "Beneficial use", unless otherwise provided, means:

(a) a use of water for the benefit of the appropriator, other persons, or the public, including but not limited to agricultural, ~~(including stock water)~~, domestic, fish and wildlife, industrial, irrigation, mining, municipal, power, and recreational uses;

(b) a use of water appropriated by the department for the

state water leasing program under 85-2-141 and of water leased under a valid lease issued by the department under 85-2-141; or

(c) a use of water through a temporary change in appropriation right or lease to enhance instream flow to benefit the fishery resource in accordance with 85-2-408; or

(d) a use of water for aquifer recharge or mitigation as provided in [sections 14 and 15].

~~(3)~~(4) "Certificate" means a certificate of water right issued by the department.

~~(4)~~(5) "Change in appropriation right" means a change in the place of diversion, the place of use, the purpose of use, or the place of storage.

~~(5)~~(6) "Correct and complete" means that the information required to be submitted conforms to the standard of substantial credible information and that all of the necessary parts of the form requiring the information have been filled in with the required information.

~~(6)~~(7) "Declaration" means the declaration of an existing right filed with the department under section 8, Chapter 452, Laws of 1973.

~~(7)~~(8) "Department" means the department of natural resources and conservation provided for in Title 2, chapter 15, part 33.

~~(8)~~(9) "Developed spring" means any artificial opening or excavation in the ground, however made, including any physical alteration at the point of discharge regardless of whether it results in any increase in the yield of ground water, from which

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ground water is sought or can be obtained or through which it flows under natural pressures or is artificially withdrawn.

~~(9)~~(10) "Existing right" or "existing water right" means a right to the use of water that would be protected under the law as it existed prior to July 1, 1973. The term includes federal non-Indian and Indian reserved water rights created under federal law and water rights created under state law.

~~(10)~~(11) "Ground water" means any water that is beneath the ground surface.

~~(11)~~(12) "Late claim" means a claim to an existing right forfeited pursuant to the conclusive presumption of abandonment under 85-2-226.

(13) "Mitigation" means the reallocation of surface water or ground water through a change in appropriation right or other means that does not result in surface water being introduced into an aquifer through aquifer recharge to offset an adverse effect to a senior appropriator resulting from a new appropriation right or a change in appropriation right.

(14) "Municipality" means an incorporated city or town in the state organized and incorporated under Title 7, chapter 2.

~~(12)~~(15) "Permit" means the permit to appropriate issued by the department under 85-2-301 through 85-2-303 and 85-2-306 through 85-2-314.

~~(13)~~(16) "Person" means an individual, association, partnership, corporation, state agency, political subdivision, the United States or any agency of the United States, or any other entity.

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~~(14)~~ (17) (a) "Political subdivision" means any county, incorporated city or town, public corporation, or district created pursuant to state law or other public body of the state empowered to appropriate water.

(b) The term does not mean a private corporation, association, or group.

~~(15)~~ (18) "Salvage" means to make water available for beneficial use from an existing valid appropriation through application of water-saving methods.

~~(16)~~ (19) "State water reservation" means a water right created under state law after July 1, 1973, that reserves water for existing or future beneficial uses or that maintains a minimum flow, level, or quality of water throughout the year or at periods or for defined lengths of time.

~~(17)~~ (20) "Substantial credible information" means probable, believable facts sufficient to support a reasonable legal theory upon which the department should proceed with the action requested by the person providing the information.

~~(18)~~ (21) "Waste" means the unreasonable loss of water through the design or negligent operation of an appropriation or water distribution facility or the application of water to anything but a beneficial use.

~~(19)~~ (22) "Water" means all water of the state, surface and subsurface, regardless of its character or manner of occurrence, including but not limited to geothermal water, diffuse surface water, and sewage effluent.

~~(20)~~ (23) "Water division" means a drainage basin as defined

in 3-7-102.

~~(21)~~(24) "Water judge" means a judge as provided for in Title 3, chapter 7.

~~(22)~~(25) "Water master" means a master as provided for in Title 3, chapter 7.

~~(23)~~(26) "Watercourse" means any naturally occurring stream or river from which water is diverted for beneficial uses. It does not include ditches, culverts, or other constructed waterways.

~~(24)~~(27) "Well" means any artificial opening or excavation in the ground, however made, by which ground water is sought or can be obtained or through which it flows under natural pressures or is artificially withdrawn."

{ Internal References to 85-2-102:
82-4-355 x 85-2-141x 85-2-506a }

Section 2. Section 85-2-302, MCA, is amended to read:

"85-2-302. Application for permit. (1) Except as provided in 85-2-306 and [section 14], a person may not appropriate water or commence construction of diversion, impoundment, withdrawal, or related distribution works except by applying for and receiving a permit from the department.

(2) The department shall adopt rules that are necessary to determine whether or not an application is correct and complete, based on the provisions applicable to issuance of a permit under this part. The rules must be adopted in compliance with Title 2, chapter 4.

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(3) The application must be made on a form prescribed by the department. The department shall make the forms available through its offices.

(4) The applicant shall submit a correct and complete application. The determination of whether an application is correct and complete must be based on rules adopted under subsection (2) that are in effect at the time the application is submitted.

(5) The department shall notify the applicant of any defects in an application within 180 days. The defects must be identified by reference to the rules adopted under subsection (2). If the department does not notify the applicant of any defects within 180 days, the application must be treated as a correct and complete application.

(6) An application does not lose priority of filing because of defects if the application is corrected or completed within 30 days of the date of notification of the defects or within a further time as the department may allow, but not to exceed 90 days from the date of notification. If an application is made correct and complete after the mandated time period, but within 90 days of the date of notification of the defects, the priority date of the application is the date the application is made correct and complete.

(7) An application not corrected or completed within 90 days from the date of notification of the defects is terminated."

{ Internal References to 85-2-302:

85-2-102* x	85-2-102*x	85-2-310 x	85-2-329x
85-2-335x	85-2-337x	85-2-340x	85-2-342x

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85-2-344x 85-2-401*x}

Section 3. Section 85-2-329, MCA, is amended to read:

"85-2-329. Definitions. Unless the context requires otherwise, in 85-2-330 and this section, the following definitions apply:

(1) "Application" means an application for a beneficial water use permit pursuant to 85-2-302 or a state water reservation pursuant to 85-2-316.

~~(2) "Ground water" means water that is beneath the land surface or beneath the bed of a stream, lake, reservoir, or other body of surface water and that is not immediately or directly connected to surface water.~~

~~(3)~~ (2) "Nonconsumptive use" means a beneficial use of water that does not cause a reduction in the source of supply and in which substantially all of the water returns without delay to the source of supply, causing little or no disruption in stream conditions.

~~(4)~~ (3) "Teton River basin" means the drainage area of the Teton River and its tributaries above the confluence of the Teton and Marias Rivers."

{ Internal References to 85-2-329: None. }

Section 4. Section 85-2-330, MCA, is amended to read:

"85-2-330. Basin closure -- exceptions. (1) As provided in 85-2-319 and subject to the provisions of subsection (2) of this section, the department may not ~~process or~~ grant an application

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for a permit to appropriate water or for a reservation to reserve water within the Teton River basin.

(2) The provisions of subsection (1) do not apply to:

(a) an application for a permit to appropriate ground water provided the applicant complies with the provisions of [section 14];

(b) an application for a permit to appropriate water for a nonconsumptive use;

(c) an application for a permit to appropriate water for domestic use from surface water or pursuant to 85-2-306, municipal, or stock use or use by a municipality;

(d) an application to store water during high spring flows;
or

(e) emergency temporary appropriations as provided for in 85-2-113(3); or

(f) an application for a permit to appropriate surface water to conduct response actions related to natural resource restoration required for:

(i) remedial actions pursuant to the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. 9601, et seq.;

(ii) aquatic resources activities done in compliance with and as required by the federal Clean Water Act of 1977, 33 U.S.C. 1251 through 1387; or

(iii) remedial actions taken pursuant to Title 75, chapter 10, part 7.

(3) A permit issued to conduct remedial actions or aquatic

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resource activities under subsection (2)(f) may not be used for dilution.

(4) A change of use authorization for changing the purpose of use may not be issued for any permit issued pursuant to subsection (2)(b), (2)(c), (2)(e), or (2)(f)."

{ Internal References to 85-2-330:
85-2-329x }

Section 5. Section 85-2-336, MCA, is amended to read:

"85-2-336. Basin closure -- exception. (1) As provided in 85-2-319 and subject to the provisions of subsection (2) of this section, the department may not ~~process or~~ grant an application for a permit to appropriate water within the Upper Clark Fork River basin.

(2) The provisions of subsection (1) do not apply to:

(a) an application for a permit to appropriate ground water provided the applicant complies with [section 14];

(b) ~~an application filed prior to January 1, 2000, for a permit to appropriate water to conduct response actions or remedial actions pursuant to the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, or Title 75, chapter 10, part 7, at sites designated as of January 1, 1994. The total flow rates for all permits issued under this subsection (2)(b) may not exceed 10 cubic feet per second. A permit issued to conduct response actions or remedial actions may not be used for dilution and must be limited to a term not to exceed the necessary time to complete the~~

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~~response or remedial action, and the permit may not be transferred to any person for any purpose other than the designated response or remedial action~~ an application for a permit to appropriate surface water to conduct aquatic resources activities done in compliance with and as required by the federal Clean Water Act of 1977, 33 U.S.C. 1251 through 1387. A permit issued to conduct aquatic resource actions may not be used for dilution.

(c) an application for a permit to appropriate water for stock use or use by a municipality;

(d) an application to store water; or

(e) an application for power generation at existing hydroelectric dams. The department may not approve a permit for power generation if approval results in additional consumption of water.

(3) A change of use authorization for changing the purpose of use may not be issued for any permit issued pursuant to subsection (2)(b) or (2)(c).

(4) Applications for state water reservations in the Upper Clark Fork River basin filed pursuant to 85-2-316 and pending as of May 1, 1991, have a priority date of May 1, 1991. The filing of a state water reservation application does not provide standing to object under 85-2-402.

~~(4)~~ (5) The department may not process or approve applications for state water reservations in the Upper Clark Fork River basin filed pursuant to 85-2-316."

{ Internal References to 85-2-336:

85-2-335*x 85-2-337a 85-2-338x}

Section 6. Section 85-2-337, MCA, is amended to read:

"85-2-337. Ground water permit applications -- report required. (1) During the period of basin closure provided in 85-2-336(1), an applicant for a ground water permit in the Upper Clark Fork River basin shall ~~submit a report prepared by a professional engineer or hydrologist addressing the hydrologic connection between the source of the ground water and surface water. If the applicant fails to submit the report required in this section, the application is considered defective and must be processed pursuant to 85-2-302~~ comply with the provisions of [section 14].

~~(2) Except as provided in subsection (3), the department may not issue a permit to appropriate ground water in the Upper Clark Fork River basin unless the applicant proves by a preponderance of evidence, in addition to the criteria of 85-2-311, that the source of the ground water is not a part of or substantially or directly connected to surface water.~~

~~(3)(2) The department may issue a permit to appropriate ground water if the application includes an augmentation plan and if the applicant proves by a preponderance of evidence, in addition to the criteria of 85-2-311, that the augmentation plan provides sufficient augmentation water in amount, time, and location to replace depletions to senior water rights pursuant to [sections 14 through 18]."~~

{Internal References to 85-2-337:

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85-2-335*x}

Section 7. Section 85-2-340, MCA, is amended to read:

"85-2-340. Definitions. Unless the context requires otherwise, in 85-2-341 and this section, the following definitions apply:

(1) "Application" means an application for a beneficial water use permit pursuant to 85-2-302 or a state water reservation pursuant to 85-2-316.

(2) "Ground water" ~~means water that is beneath the land surface or beneath the bed of a stream, lake, reservoir, or other body of surface water and that is not immediately or directly connected to surface water~~ has the same meaning as that provided in 85-2-102.

(3) "Jefferson River basin" means the drainage area of the Jefferson River and its tributaries above the confluence of the Jefferson and Missouri Rivers.

(4) "Madison River basin" means the drainage area of the Madison River and its tributaries above the confluence of the Madison and Jefferson Rivers.

(5) "Nonconsumptive use" means a beneficial use of water that does not cause a reduction in the source of supply and in which substantially all of the water returns without delay to the source of supply, causing little or no disruption in stream conditions."

{ Internal References to 85-2-340:
85-20-501x }

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Section 8. Section 85-2-341, MCA, is amended to read:

"85-2-341. Basin closure -- exceptions. (1) As provided in 85-2-319 and subject to the provisions of subsection (2) of this section, the department may not ~~process or~~ grant an application for a permit to appropriate water or for a state water reservation to reserve water within the Jefferson River basin or Madison River basin.

(2) The provisions of subsection (1) do not apply to:

(a) an application for a permit to appropriate ground water provided the applicant complies with the provisions of [section 14];

(b) an application for a permit to appropriate water for a nonconsumptive use;

(c) an application for a permit to appropriate water for domestic use from surface water or pursuant to 85-2-306, ~~municipal,~~ or stock use or use by a municipality;

(d) an application to store water during high spring flows;
or

(e) temporary emergency appropriations as provided for in 85-2-113(3); or

(f) an application for a permit to appropriate surface water to conduct response actions related to natural resource restoration required for:

(i) remedial actions pursuant to the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. 9601, et seq.;

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(ii) aquatic resources activities done in compliance with and as required by the federal Clean Water Act of 1977, 33 U.S.C. 1251 through 1387; or

(iii) remedial actions taken pursuant to Title 75, chapter 10, part 7.

(3) A permit issued to conduct remedial actions or aquatic resource activities under subsection (2)(f) may not be used for dilution.

(4) A change of use authorization for changing the purpose of use may not be issued for any permit issued pursuant to subsection (2)(b), (2)(c), (2)(e), or (2)(f)."

{ Internal References to 85-2-341:
85-2-340x }

Section 9. Section 85-2-342, MCA, is amended to read:

"85-2-342. Definitions. Unless the context requires otherwise, in 85-2-343 and this section, the following definitions apply:

(1) "Application" means an application for a beneficial water use permit pursuant to 85-2-302 or a state water reservation pursuant to 85-2-316.

~~(2) "Ground water" means water that is beneath the land surface or beneath the bed of a stream, lake, reservoir, or other body of surface water and that is not immediately or directly connected to surface water.~~

~~(3)~~ (2) "Nonconsumptive use" means a beneficial use of water that does not cause a reduction in the source of supply and in

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which substantially all of the water returns without delay to the source of supply, causing little or no disruption in stream conditions.

~~(4)~~(3) "Upper Missouri River basin" means the drainage area of the Missouri River and its tributaries above Morony dam."

{ Internal References to 85-2-342: None. }

Section 10. Section 85-2-343, MCA, is amended to read:

"85-2-343. Basin closure -- exceptions. (1) As provided in 85-2-319 and subject to the provisions of subsection (2) of this section, the department may not ~~process or~~ grant an application for a permit to appropriate water or for a reservation to reserve water within the upper Missouri River basin until the final decrees have been issued in accordance with part 2 of this chapter for all of the subbasins of the upper Missouri River basin.

(2) The provisions of subsection (1) do not apply to:

(a) an application for a permit to appropriate ground water provided the applicant complies with the provisions of [section 14];

(b) an application for a permit to appropriate water for a nonconsumptive use;

(c) an application for a permit to appropriate water for domestic use from surface water or pursuant to 85-2-306, ~~municipal~~, or stock use or use by a municipality;

(d) an application to store water during high spring flows;

(e) an application for a permit to use water from the Muddy

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Creek drainage, which drains to the Sun River, if the proposed use of water will help control erosion in the Muddy Creek drainage; or

(f) temporary emergency appropriations as provided for in 85-2-113(3); or

(g) an application for a permit to appropriate surface water to conduct response actions related to natural resource restoration required for:

(i) remedial actions pursuant to the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. 9601, et seq.;

(ii) aquatic resources activities done in compliance with and as required by the federal Clean Water Act of 1977, 33 U.S.C. 1251 through 1387; or

(iii) remedial actions taken pursuant to Title 75, chapter 10, part 7.

(3) A permit issued to conduct remedial actions or aquatic resource activities under subsection (2)(f) may not be used for dilution.

(4) A change of use authorization for changing the purpose of use may not be issued for any permit issued pursuant to subsection (2)(b), (2)(c), (2)(e), (2)(f), or (2)(g)."

{ Internal References to 85-2-343:
85-2-342x }

Section 11. Section 85-2-344, MCA, is amended to read:

"85-2-344. Bitterroot River subbasin temporary closure --

definitions -- exceptions. (1) Unless the context requires otherwise, in this section, the following definitions apply:

(a) "Application" means an application for a beneficial water use permit pursuant to 85-2-302 or a state water reservation pursuant to 85-2-316.

(b) "Bitterroot River basin" means the drainage area of the Bitterroot River and its tributaries above the confluence of the Bitterroot River and Clark Fork of the Columbia River and designated as "Basin 76H".

(c) "Bitterroot River subbasin" means one of the following hydrologically related portions of the Bitterroot River basin:

(i) the mainstem subbasin, designated as "Subbasin 76HA";
(ii) the north end subbasin, designated as "Subbasin 76HB";
(iii) the east side subbasin, designated as "Subbasin 76HC";
(iv) the southeast subbasin, designated as "Subbasin 76HD";
(v) the south end subbasin, designated as "Subbasin 76HE";
(vi) the southwest subbasin, designated as "Subbasin 76HF";
(vii) the west central subbasin, designated as "Subbasin 76HG"; or

(viii) the northwest subbasin, designated as "Subbasin 76HH".

(2) As provided in 85-2-319, the department may not process or grant an application for a permit to appropriate water or for a state water reservation within a Bitterroot River subbasin until the closure for the basin is terminated pursuant to subsection (3) of this section, except for:

(a) an application for a permit to appropriate ground water

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provided the applicant complies with [section 14];

(b) an application for a permit to appropriate water for a municipal water supply use by a municipality;

(c) temporary emergency appropriations pursuant to 85-2-113(3); or

(d) an application to store water during high spring flow in an impoundment with a capacity of 50 acre-feet or more; or

(e) an application for a permit to appropriate surface water to conduct response actions related to natural resource restoration required for:

(i) remedial actions pursuant to the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. 9601, et seq.;

(ii) aquatic resources activities done in compliance with and as required by the federal Clean Water Act of 1977, 33 U.S.C. 1251 through 1387; or

(iii) remedial actions taken pursuant to Title 75, chapter 10, part 7.

(3) A permit issued to conduct remedial actions or aquatic resource activities under subsection (2)(e) may not be used for dilution.

~~(3)~~(4) Each Bitterroot River subbasin is closed to new appropriations and new state water reservations until 2 years after all water rights in the subbasin arising under the laws of the state are subject to an enforceable and administrable decree as provided in 85-2-406(4)."

{Internal References to 85-2-344:

85-2-350x}

Section 12. Section 85-2-402, MCA, is amended to read:

"85-2-402. (Temporary) Changes in appropriation rights. (1)

The right to make a change subject to the provisions of this section in an existing water right, a permit, or a state water reservation is recognized and confirmed. In a change proceeding under this section, there is no presumption that an applicant for a change in appropriation right cannot establish lack of adverse effect prior to the adjudication of other rights in the source of supply pursuant to this chapter. Except as provided in 85-2-410 and subsections (15) and (16) of this section, an appropriator may not make a change in an appropriation right without the approval of the department or, if applicable, of the legislature. An applicant shall submit a correct and complete application.

(2) Except as provided in subsections (4) through (6), (15), and (16), and subject to subsection (17), the department shall approve a change in appropriation right if the appropriator proves by a preponderance of evidence that the following criteria are met:

(a) The proposed change in appropriation right will not adversely affect the use of the existing water rights of other persons or other perfected or planned uses or developments for which a permit or certificate has been issued or for which a state water reservation has been issued under part 3.

(b) Except for a lease authorization pursuant to 85-2-436 or a temporary change in appropriation right authorization to

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maintain or enhance streamflows to benefit the fishery resource pursuant to 85-2-408, the proposed means of diversion, construction, and operation of the appropriation works are adequate.

(c) The proposed use of water is a beneficial use.

(d) Except for a lease authorization pursuant to 85-2-436 or a temporary change in appropriation right authorization pursuant to 85-2-408, the applicant has a possessory interest, or the written consent of the person with the possessory interest, in the property where the water is to be put to beneficial use.

(e) If the change in appropriation right involves salvaged water, the proposed water-saving methods will salvage at least the amount of water asserted by the applicant.

(f) The water quality of an appropriator will not be adversely affected.

(g) The ability of a discharge permit holder to satisfy effluent limitations of a permit issued in accordance with Title 75, chapter 5, part 4, will not be adversely affected.

(3) The applicant is required to prove that the criteria in subsections (2)(f) and (2)(g) have been met only if a valid objection is filed. A valid objection must contain substantial credible information establishing to the satisfaction of the department that the criteria in subsection (2)(f) or (2)(g), as applicable, may not be met.

(4) The department may not approve a change in purpose of use or place of use of an appropriation of 4,000 or more acre-feet of water a year and 5.5 or more cubic feet per second

of water unless the appropriator proves by a preponderance of evidence that:

(a) the criteria in subsection (2) are met; and

(b) the proposed change is a reasonable use. A finding of reasonable use must be based on a consideration of:

(i) the existing demands on the state water supply, as well as projected demands for water for future beneficial purposes, including municipal water supplies, irrigation systems, and minimum streamflows for the protection of existing water rights and aquatic life;

(ii) the benefits to the applicant and the state;

(iii) the effects on the quantity and quality of water for existing uses in the source of supply;

(iv) the availability and feasibility of using low-quality water for the purpose for which application has been made;

(v) the effects on private property rights by any creation of or contribution to saline seep; and

(vi) the probable significant adverse environmental impacts of the proposed use of water as determined by the department pursuant to Title 75, chapter 1, or Title 75, chapter 20.

(5) The department may not approve a change in purpose of use or place of use for a diversion that results in 4,000 or more acre-feet of water a year and 5.5 or more cubic feet per second of water being consumed unless:

(a) the applicant proves by clear and convincing evidence and the department finds that the criteria in subsections (2) and (4) are met; and

(b) for the withdrawal and transportation of appropriated water for out-of-state use, the department then petitions the legislature and the legislature affirms the decision of the department after one or more public hearings.

(6) The state of Montana has long recognized the importance of conserving its public waters and the necessity to maintain adequate water supplies for the state's water requirements, including requirements for federal non-Indian and Indian reserved water rights held by the United States for federal reserved lands and in trust for the various Indian tribes within the state's boundaries. Although the state of Montana also recognizes that, under appropriate conditions, the out-of-state transportation and use of its public waters are not in conflict with the public welfare of its citizens or the conservation of its waters, the following criteria must be met before out-of-state use may occur:

(a) The department and, if applicable, the legislature may not approve a change in appropriation right for the withdrawal and transportation of appropriated water for use outside the state unless the appropriator proves by clear and convincing evidence and, if applicable, the legislature approves after one or more public hearings that:

(i) depending on the volume of water diverted or consumed, the applicable criteria and procedures of subsection (2) or (4) are met;

(ii) the proposed out-of-state use of water is not contrary to water conservation in Montana; and

(iii) the proposed out-of-state use of water is not

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otherwise detrimental to the public welfare of the citizens of Montana.

(b) In determining whether the appropriator has proved by clear and convincing evidence that the requirements of subsections (6)(a)(ii) and (6)(a)(iii) will be met, the department and, if applicable, the legislature shall consider the following factors:

(i) whether there are present or projected water shortages within the state of Montana;

(ii) whether the water that is the subject of the proposed change in appropriation might feasibly be transported to alleviate water shortages within the state of Montana;

(iii) the supply and sources of water available to the applicant in the state where the applicant intends to use the water; and

(iv) the demands placed on the applicant's supply in the state where the applicant intends to use the water.

(c) When applying for a change in appropriation right to withdraw and transport water for use outside the state, the applicant shall submit to and comply with the laws of the state of Montana governing the appropriation and use of water.

(7) For any application for a change in appropriation right involving 4,000 or more acre-feet of water a year and 5.5 or more cubic feet per second of water, the department shall give notice of the proposed change in accordance with 85-2-307 and shall hold one or more hearings in accordance with 85-2-309 prior to its approval or denial of the proposed change. The department shall

provide notice and may hold one or more hearings upon any other proposed change in appropriation right if it determines that the proposed change might adversely affect the rights of other persons.

(8) The department or the legislature, if applicable, may approve a change in appropriation right subject to the terms, conditions, restrictions, and limitations that it considers necessary to satisfy the criteria of this section, including limitations on the time for completion of the change. The department may extend time limits specified in the change approval under the applicable criteria and procedures of 85-2-312(3).

(9) Upon actual application of water to the proposed beneficial use within the time allowed, the appropriator shall notify the department that the appropriation has been completed. The notification must contain a certified statement by a person with experience in the design, construction, or operation of appropriation works describing how the appropriation was completed.

(10) If a change in appropriation right is not completed as approved by the department or legislature or if the terms, conditions, restrictions, and limitations of the change approval are not complied with, the department may, after notice and opportunity for hearing, require the appropriator to show cause why the change approval should not be modified or revoked. If the appropriator fails to show sufficient cause, the department may modify or revoke the change approval.

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(11) The original of a change approval issued by the department must be sent to the applicant, and a duplicate must be kept in the office of the department in Helena.

(12) A person holding an issued permit or change approval that has not been perfected may change the place of diversion, place of use, purpose of use, or place of storage by filing an application for change pursuant to this section.

(13) A change in appropriation right contrary to the provisions of this section is invalid. An officer, agent, agency, or employee of the state may not knowingly permit, aid, or assist in any manner an unauthorized change in appropriation right. A person or corporation may not, directly or indirectly, personally or through an agent, officer, or employee, attempt to change an appropriation right except in accordance with this section.

(14) The department may adopt rules to implement the provisions of this section.

(15) (a) An appropriator may change an appropriation right for a replacement well without the prior approval of the department if:

(i) the appropriation right is for:

(A) ground water outside the boundaries of a controlled ground water area; or

(B) ground water inside the boundaries of a controlled ground water area and if the provisions of the order declaring the controlled ground water area do not restrict such a change;

(ii) the change in appropriation right is to replace an existing well and the existing well will no longer be used;

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(iii) the rate and volume of the appropriation from the replacement well are equal to or less than that of the well being replaced and do not exceed:

(A) 450 gallons a minute for a municipal well; or

(B) 35 gallons a minute and 10 acre-feet a year for all other wells;

(iv) the water from the replacement well is appropriated from the same aquifer as the water appropriated from the well being replaced; and

(v) a timely, correct and complete notice of replacement well is submitted to the department as provided in subsection (15) (b) .

(b) (i) After completion of a replacement well and appropriation of ground water for a beneficial use, the appropriator shall file a notice of replacement well with the department on a form provided by the department.

(ii) The department shall review the notice of replacement well and shall issue an authorization of a change in an appropriation right if all of the criteria in subsection (15) (a) have been met and the notice is correct and complete.

(iii) The department may not issue an authorization of a change in appropriation right until a correct and complete notice of replacement well has been filed with the department. The department shall return a defective notice to the appropriator, along with a description of defects in the notice. The appropriator shall refile a corrected and completed notice of replacement well within 30 days of notification of defects or

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within a further time as the department may allow, not to exceed 6 months.

(iv) If a notice of replacement well is not completed within the time allowed, the appropriator shall:

(A) cease appropriation of water from the replacement well pending approval by the department; and

(B) submit an application for a change in appropriation right to the department pursuant to subsections (1) through (3).

(c) The provisions of this subsection (15) do not apply to an appropriation right abandoned under 85-2-404.

(d) For each well that is replaced under this subsection (15), the appropriator shall follow the well abandonment procedures, standards, and rules adopted by the board of water well contractors pursuant to 37-43-202.

(e) The provisions of subsections (2), (3), (9), and (10) do not apply to a change in appropriation right that meets the requirements of subsection (15)(a).

(16) (a) An appropriator may change an appropriation right without the prior approval of the department for the purpose of constructing a redundant water supply well in a public water supply system, as defined in 75-6-102, if the redundant water supply well:

(i) withdraws water from the same ground water source as the original well; and

(ii) is required by a state or federal agency.

(b) The priority date of the redundant water supply well is the same as the priority date of the original well. Only one well

may be used at one time.

(c) Within 60 days of completion of a redundant water supply well, the appropriator shall file a notice of construction of the well with the department on a form provided by the department. The department may return a defective notice of construction to the appropriator for correction and completion.

(d) The provisions of subsections (9) and (10) do not apply to a change in appropriation right that meets the requirements of this section.

(17) For an application for a change in appropriation right to a different beneficial use or a change in point of diversion from surface water to ground water in a basin closed pursuant to 85-2-330, 85-2-336, 85-2-341, 85-2-343, or 85-2-344 or during the period of closure for any basin that is administratively closed pursuant to 85-2-319, the applicant must comply with the provisions of [section 14] in addition to the other requirements of this section. (Terminates June 30, 2009--sec. 9, Ch. 123, L. 1999.)

85-2-402. (Effective July 1, 2009) Changes in appropriation rights. (1) The right to make a change subject to the provisions of this section in an existing water right, a permit, or a state water reservation is recognized and confirmed. In a change proceeding under this section, there is no presumption that an applicant for a change in appropriation right cannot establish lack of adverse effect prior to the adjudication of other rights in the source of supply pursuant to this chapter. Except as provided in 85-2-410 and subsections (15) and (16) of this

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section, an appropriator may not make a change in an appropriation right without the approval of the department or, if applicable, of the legislature. An applicant shall submit a correct and complete application.

(2) Except as provided in subsections (4) through (6), (15), and (16), and subject to subsection (17), the department shall approve a change in appropriation right if the appropriator proves by a preponderance of evidence that the following criteria are met:

(a) The proposed change in appropriation right will not adversely affect the use of the existing water rights of other persons or other perfected or planned uses or developments for which a permit or certificate has been issued or for which a state water reservation has been issued under part 3.

(b) Except for a temporary change in appropriation right authorization to maintain or enhance streamflows to benefit the fishery resource pursuant to 85-2-408, the proposed means of diversion, construction, and operation of the appropriation works are adequate.

(c) The proposed use of water is a beneficial use.

(d) Except for a temporary change in appropriation right authorization pursuant to 85-2-408, the applicant has a possessory interest, or the written consent of the person with the possessory interest, in the property where the water is to be put to beneficial use.

(e) If the change in appropriation right involves salvaged water, the proposed water-saving methods will salvage at least

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the amount of water asserted by the applicant.

(f) The water quality of an appropriator will not be adversely affected.

(g) The ability of a discharge permitholder to satisfy effluent limitations of a permit issued in accordance with Title 75, chapter 5, part 4, will not be adversely affected.

(3) The applicant is required to prove that the criteria in subsections (2)(f) and (2)(g) have been met only if a valid objection is filed. A valid objection must contain substantial credible information establishing to the satisfaction of the department that the criteria in subsection (2)(f) or (2)(g), as applicable, may not be met.

(4) The department may not approve a change in purpose of use or place of use of an appropriation of 4,000 or more acre-feet of water a year and 5.5 or more cubic feet per second of water unless the appropriator proves by a preponderance of evidence that:

(a) the criteria in subsection (2) are met; and

(b) the proposed change is a reasonable use. A finding of reasonable use must be based on a consideration of:

(i) the existing demands on the state water supply, as well as projected demands for water for future beneficial purposes, including municipal water supplies, irrigation systems, and minimum streamflows for the protection of existing water rights and aquatic life;

(ii) the benefits to the applicant and the state;

(iii) the effects on the quantity and quality of water for

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existing uses in the source of supply;

(iv) the availability and feasibility of using low-quality water for the purpose for which application has been made;

(v) the effects on private property rights by any creation of or contribution to saline seep; and

(vi) the probable significant adverse environmental impacts of the proposed use of water as determined by the department pursuant to Title 75, chapter 1, or Title 75, chapter 20.

(5) The department may not approve a change in purpose of use or place of use for a diversion that results in 4,000 or more acre-feet of water a year and 5.5 or more cubic feet per second of water being consumed unless:

(a) the applicant proves by clear and convincing evidence and the department finds that the criteria in subsections (2) and (4) are met; and

(b) for the withdrawal and transportation of appropriated water for out-of-state use, the department then petitions the legislature and the legislature affirms the decision of the department after one or more public hearings.

(6) The state of Montana has long recognized the importance of conserving its public waters and the necessity to maintain adequate water supplies for the state's water requirements, including requirements for federal non-Indian and Indian reserved water rights held by the United States for federal reserved lands and in trust for the various Indian tribes within the state's boundaries. Although the state of Montana also recognizes that, under appropriate conditions, the out-of-state transportation and

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use of its public waters are not in conflict with the public welfare of its citizens or the conservation of its waters, the following criteria must be met before out-of-state use may occur:

(a) The department and, if applicable, the legislature may not approve a change in appropriation right for the withdrawal and transportation of appropriated water for use outside the state unless the appropriator proves by clear and convincing evidence and, if applicable, the legislature approves after one or more public hearings that:

(i) depending on the volume of water diverted or consumed, the applicable criteria and procedures of subsection (2) or (4) are met;

(ii) the proposed out-of-state use of water is not contrary to water conservation in Montana; and

(iii) the proposed out-of-state use of water is not otherwise detrimental to the public welfare of the citizens of Montana.

(b) In determining whether the appropriator has proved by clear and convincing evidence that the requirements of subsections (6)(a)(ii) and (6)(a)(iii) will be met, the department and, if applicable, the legislature shall consider the following factors:

(i) whether there are present or projected water shortages within the state of Montana;

(ii) whether the water that is the subject of the proposed change in appropriation might feasibly be transported to alleviate water shortages within the state of Montana;

(iii) the supply and sources of water available to the applicant in the state where the applicant intends to use the water; and

(iv) the demands placed on the applicant's supply in the state where the applicant intends to use the water.

(c) When applying for a change in appropriation right to withdraw and transport water for use outside the state, the applicant shall submit to and comply with the laws of the state of Montana governing the appropriation and use of water.

(7) For any application for a change in appropriation right involving 4,000 or more acre-feet of water a year and 5.5 or more cubic feet per second of water, the department shall give notice of the proposed change in accordance with 85-2-307 and shall hold one or more hearings in accordance with 85-2-309 prior to its approval or denial of the proposed change. The department shall provide notice and may hold one or more hearings upon any other proposed change in appropriation right if it determines that the proposed change might adversely affect the rights of other persons.

(8) The department or the legislature, if applicable, may approve a change in appropriation right subject to the terms, conditions, restrictions, and limitations that it considers necessary to satisfy the criteria of this section, including limitations on the time for completion of the change. The department may extend time limits specified in the change approval under the applicable criteria and procedures of 85-2-312(3).

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(9) Upon actual application of water to the proposed beneficial use within the time allowed, the appropriator shall notify the department that the appropriation has been completed. The notification must contain a certified statement by a person with experience in the design, construction, or operation of appropriation works describing how the appropriation was completed.

(10) If a change in appropriation right is not completed as approved by the department or legislature or if the terms, conditions, restrictions, and limitations of the change approval are not complied with, the department may, after notice and opportunity for hearing, require the appropriator to show cause why the change approval should not be modified or revoked. If the appropriator fails to show sufficient cause, the department may modify or revoke the change approval.

(11) The original of a change approval issued by the department must be sent to the applicant, and a duplicate must be kept in the office of the department in Helena.

(12) A person holding an issued permit or change approval that has not been perfected may change the place of diversion, place of use, purpose of use, or place of storage by filing an application for change pursuant to this section.

(13) A change in appropriation right contrary to the provisions of this section is invalid. An officer, agent, agency, or employee of the state may not knowingly permit, aid, or assist in any manner an unauthorized change in appropriation right. A person or corporation may not, directly or indirectly, personally

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or through an agent, officer, or employee, attempt to change an appropriation right except in accordance with this section.

(14) The department may adopt rules to implement the provisions of this section.

(15) (a) An appropriator may change an appropriation right for a replacement well without the prior approval of the department if:

(i) the appropriation right is for:

(A) ground water outside the boundaries of a controlled ground water area; or

(B) ground water inside the boundaries of a controlled ground water area and if the provisions of the order declaring the controlled ground water area do not restrict such a change;

(ii) the change in appropriation right is to replace an existing well and the existing well will no longer be used;

(iii) the rate and volume of the appropriation from the replacement well are equal to or less than that of the well being replaced and do not exceed:

(A) 450 gallons a minute for a municipal well; or

(B) 35 gallons a minute and 10 acre-feet a year for all other wells;

(iv) the water from the replacement well is appropriated from the same aquifer as the water appropriated from the well being replaced; and

(v) a timely, correct and complete notice of replacement well is submitted to the department as provided in subsection

(15) (b) .

(b) (i) After completion of a replacement well and appropriation of ground water for a beneficial use, the appropriator shall file a notice of replacement well with the department on a form provided by the department.

(ii) The department shall review the notice of replacement well and shall issue an authorization of a change in an appropriation right if all of the criteria in subsection (15)(a) have been met and the notice is correct and complete.

(iii) The department may not issue an authorization of a change in appropriation right until a correct and complete notice of replacement well has been filed with the department. The department shall return a defective notice to the appropriator, along with a description of defects in the notice. The appropriator shall refile a corrected and completed notice of replacement well within 30 days of notification of defects or within a further time as the department may allow, not to exceed 6 months.

(iv) If a notice of replacement well is not completed within the time allowed, the appropriator shall:

(A) cease appropriation of water from the replacement well pending approval by the department; and

(B) submit an application for a change in appropriation right to the department pursuant to subsections (1) through (3).

(c) The provisions of this subsection (15) do not apply to an appropriation right abandoned under 85-2-404.

(d) For each well that is replaced under this subsection (15), the appropriator shall follow the well abandonment

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procedures, standards, and rules adopted by the board of water well contractors pursuant to 37-43-202.

(e) The provisions of subsections (2), (3), (9), and (10) do not apply to a change in appropriation right that meets the requirements of subsection (15)(a).

(16) (a) An appropriator may change an appropriation right without the prior approval of the department for the purpose of constructing a redundant water supply well in a public water supply system, as defined in 75-6-102, if the redundant water supply well:

(i) withdraws water from the same ground water source as the original well; and

(ii) is required by a state or federal agency.

(b) The priority date of the redundant water supply well is the same as the priority date of the original well. Only one well may be used at one time.

(c) Within 60 days of completion of a redundant water supply well, the appropriator shall file a notice of construction of the well with the department on a form provided by the department. The department may return a defective notice of construction to the appropriator for correction and completion.

(d) The provisions of subsections (9) and (10) do not apply to a change in appropriation right that meets the requirements of this section.

(17) For an application for a change in appropriation right to a different beneficial use or a change in point of diversion from surface water to ground water in a basin closed pursuant to

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85-2-330, 852-336, 85-2-341, 85-2-343, or 85-2-344 or during the period of closure for any basin that is administratively closed pursuant to 85-2-319, the applicant must comply with the provisions of [section 14] in addition to the other requirements of this section."

{ Internal References to 85-2-402:

3-7-224x	85-2-308x	85-2-309x	85-2-316x
85-2-336x	85-2-403x	85-2-407x	85-2-408x
85-2-408x	85-2-419 x	85-2-436x	85-2-436x
85-2-602x	85-2-708x	85-20-1001x}	

Section 13. Section 85-2-506, MCA, is amended to read:

"85-2-506. Controlled ground water areas -- designation or modification. (1) The department may designate or modify controlled ground water areas as provided in this part.

(2) Designation or modification of an area of controlled ground water use may be proposed to the department on its own motion, by petition of a state or local public health agency for identified public health risks, or by petition signed by at least 20 or one-fourth of the users (whichever is the lesser number) of ground water in a ground water area in which there are alleged to be facts showing:

(a) that ground water withdrawals are in excess of recharge to the aquifer or aquifers within the ground water area;

(b) that excessive ground water withdrawals are very likely to occur in the near future because of consistent and significant increases in withdrawals from within the ground water area;

(c) that significant disputes regarding priority of rights, amounts of ground water in use by appropriators, or priority of

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type of use are in progress within the ground water area;

(d) that ground water levels or pressures in the area in question are declining or have declined excessively;

(e) that excessive ground water withdrawals would cause contaminant migration;

(f) that ground water withdrawals adversely affecting ground water quality within the ground water area are occurring or are likely to occur; or

(g) that water quality within the ground water area is not suited for a specific beneficial use defined by ~~85-2-102(2)(a)~~ 85-2-105(3)(a).

(3) When a proposal is made, the department shall fix a time and place for a hearing, which time may not be less than 90 days from the making of the proposal. The place for the hearing must be within or as close as practical to the controlled ground water area.

(4) The department shall publish a notice of the hearing, setting forth:

(a) the names of the petitioners;

(b) the description by legal subdivisions (section, township, range) of all lands included in or proposed to be included in the ground water area or subarea;

(c) the purpose of the hearing; and

(d) the time and place of the hearing where any interested person may appear, either in person or by attorney, file written objections to the granting of the proposal, and be fully heard.

(5) The notice of hearing must be published at least once

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in each week for 3 successive weeks not less than 30 days before the date of the hearing in a newspaper of general circulation in the county or counties in which the ground water area or subarea is located. The department shall also cause a copy of the notice, together with a copy of the petition, to be served by mail, not less than 30 days before the hearing, upon each well driller licensed in Montana whose address is within any county in which any part of the area in question is located; upon each person or public agency known from an examination of the records in the department's office to be a claimant or appropriator of ground water in the area in question (claimant or appropriator meaning one who diverts, impounds, or withdraws ground water and not merely one who uses or obtains ground water from another who diverts, impounds, or withdraws ground water); upon the bureau; and upon the mayor or presiding officer of the governing body of each incorporated municipality located in whole or in part within the proposed ground water area. The department may also serve notice upon any other person or state or federal agency that the department feels may be interested in or affected by the proposed designation or modification of a controlled ground water area. The petition need not be served on any petitioner. A copy of the notice, together with a copy of the proposal, must be mailed to each person at the person's last-known address, and service is complete upon depositing it in the post office, postage prepaid, addressed to each person on whom it is to be served. Publication and mailing of the notice as prescribed in this section, when completed, is considered to be sufficient notice of the hearing

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to all interested persons."

{ Internal References to 85-2-506:

85-2-507x 85-2-507x 85-2-509x 85-20-1001x
85-20-1001x 85-20-1001x }

NEW SECTION. Section 14. Appropriation right in closed basins. (1) Except as provided in subsection (4) (a), all appropriation rights issued by the department pursuant to sections 85-2-330, 85-2-336, 85-2-341, 85-2-343, 85-2-344, or administratively closed pursuant to 85-2-319 and changes in appropriation rights for appropriation rights located within closed basins issued pursuant to 85-2-402(17) are conditional permits until a hydrogeologic assessment has been conducted to determine adverse affect, if any, and the conditions of subsections (2) and (3) have been met.

(2) (a) The applicant must conduct a hydrogeologic assessment as provided in [section 17] and provide the results to the department within 18 months from the date the conditional permit is issued.

(b) If the hydrogeologic assessment shows by a preponderance of the evidence that the proposed appropriation right or change in appropriation right will not adversely affect the use of existing water rights of other persons or other perfected or planned uses or developments for which a permit or certificate has been issued or for which a state water reservation has been issued under part 3, the conditional permit becomes an appropriation right.

(c) If the hydrogeologic study shows by a preponderance of

the evidence that the proposed appropriation right or change in appropriation right will adversely affect the use of existing water rights of other persons or other perfected or planned uses or developments for which a permit or certificate has been issued or for which a state water reservation has been issued under part 3, the conditional permit must be terminated and appropriations must cease within 30 days of the date the permit holder receives notice from the department, unless the applicant complies with subsection (3). Failure to terminate use of the appropriation shall result in a fine of not more than \$1000 per day of violation.

(3) If the conditions of subsection (2)(c) apply, the conditional permit may become an appropriation right if the applicant conducts monitoring and addresses the adverse affect by complying with [section 15 and 18]. Evidence of compliance under this subsection may be proven by a good faith application for a mitigation plan or an artificial recharge plan pursuant to [section 15] within the 30 days provided for in subsection (2)(c), followed by due diligence in pursuing and receiving approval for the mitigation plan or artificial recharge plan by the department.

(4)(a) Except as provided in this subsection (4), an application for an appropriation right issued pursuant to 85-2-330, 85-2-336, 85-2-341, 85-2-343, 85-2-344, or administratively closed pursuant to 85-2-319 or a change in appropriation right for an appropriation located within a closed basin issued pursuant to 85-2-405(17) that will put water to a beneficial use

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for human consumption or a use that would result in risk to human health if water is no longer available for the use may not be granted as a conditional permit.

(b) (i) An application that meets the criteria of subsection (4) (a) may not be considered correct and complete unless the applicant provides a hydrogeologic assessment as provided in [section 17], any necessary plans as provided in [section 15], and a monitoring plan as provided in [section 18] when the application is submitted.

(ii) If the department determines that the hydrogeologic assessment, any necessary plans, or the monitoring plan are incomplete or inadequate, the department shall return the application to the applicant identifying any deficiencies and the provisions of 85-2-302 apply.

(c) If the results of the hydrogeologic assessment meet the criteria of subsection (2) (b) the department shall issue a permit.

(d) If the results of the hydrogeologic assessment meet the criteria of subsection (2) (c), the department shall analyze the plan submitted pursuant to [section 15] to determine if adverse affect is offset. If adverse affect has not been offset the department shall deny the application.

NEW SECTION. Section 15. Artificial recharge or mitigation plan -- minimum requirements. (1) A mitigation plan must be approved by the department prior to approving a change in appropriation right or a new appropriation right that relies on a mitigation plan to reallocate surface water or ground water to

offset surface water stream flow reductions that result in adverse affect to a prior appropriator. A mitigation plan must include:

- (a) where and how the water in the plan will be put to beneficial use;
- (b) when and where water reallocated through exchange or substitution will be required;
- (c) the amount of water reallocated through exchange or substitution that is required;
- (d) how the proposed project or beneficial use for which the mitigation plan is required will be operated;
- (e) evidence that an application for a change in appropriation right, if necessary, has been submitted; and
- (f) a monitoring plan that meets the minimum requirements of [section 18].

(2) An aquifer recharge plan must be approved by the department prior to approving a change in appropriation right or a new appropriation right that relies on an aquifer recharge plan to offset surface water or ground water availability that result in adverse affect to a prior appropriator. An aquifer recharge plan must include:

- (a) evidence that the appropriate water quality related permits have been granted pursuant to Title 75, chapter 5 and pursuant to [section 16];
- (b) where and how the water in the plan will be put to beneficial use;
- (c) when and where exchange or substitute water will be

required;

(d) the amount of exchange or substitute water that is required;

(e) how the proposed project or beneficial use for which the aquifer recharge plan is required will be operated;

(f) evidence that an application for a change in appropriation right, if necessary has been submitted;

(g) description of the process by which water will be reintroduced to the aquifer; and

(h) a monitoring plan that meets the minimum requirements of [section 18].

(3) Neither a mitigation plan nor an aquifer recharge plan may be required to provide more water than necessary to avoid adverse affects to a prior appropriator.

NEW SECTION. **Section 16. Water quality overlap -- DNRC and DEQ.** (1)(a) An applicant for a new appropriation right or a change in appropriation right pursuant to [section 14] for the purpose of aquifer recharge shall provide the department with a copy of a relevant discharge permit or a certification from the department of environmental quality that a discharge permit is not required. If a permit is not required, the certification must indicate whether the activity for which the appropriation is sought is in compliance with all applicable water quality standards including nondegradation requirements.

(b) The department may not grant a new appropriation right or change in appropriation right pursuant to [section 14] for the

purpose of aquifer recharge:

(i) until the discharge permit or certification has been obtained and presented to the department; or

(ii) if certification of meeting water quality standards has been denied by the department of environmental quality.

(2) (a) Existing and future beneficial uses of water must be maintained and protected and degradation of ground water that would interfere with or become injurious to existing appropriation rights may not be allowed.

(b) All aquifer recharge plans must:

(i) address changes to water quality, if any. All plans must assess whether the introduction of water to the aquifer as the result of an aquifer recharge plan constitutes a risk of impairment to ground water or surface water quality; and

(ii) meet or exceed the nondegradation requirements provided for in Title 75, chapter 5; and

(iii) provide that any discharge meet the drinking water standards provided in Title 75, chapter 6 at the point of discharge.

NEW SECTION. Section 17. Hydrogeologic assessment -- definition -- minimum requirements. (1) (a) For the purposes of [sections 14 through 18], "hydrogeologic assessment" means a report for the project site, point of diversion, or place of use that describes the geology, hydrogeologic environment, water balance, water quality with regard to the provisions of [section 16], predicted net flow depletion, including timing of depletion,

for surface water within the area described in subsection (2) (a) within the closed basins that are subject to an appropriation right including but not limited to rivers, streams, irrigation canals, or drains that might be affected by the new appropriation right or change in appropriation right and the predicted water quality changes that may result.

(b) In predicting net flow depletion, consideration must be given to the amount to be diverted plus any amounts that will likely be lost in conveyance or return flows from the proposed use or any treated waste water return flows provided the treated waste water return flows meet the requirements of [section 16].

(2) A hydrogeologic assessment, as defined in [section 17], that will be used to determine the level of adverse affect to a prior appropriator by a new appropriation or a change in appropriation right must include a hydrogeologic model developed by a hydrogeologist or other qualified scientist or a licensed professional engineer that describes for the new appropriation or the change in appropriation right:

- (a) the area or estimated area that will be affected;
- (b) the geology in the vicinity of the project including stratigraphy and structure;
- (c) the parameters of the aquifer system, to include at a minimum, estimates for:
 - (i) lateral and vertical extent of the aquifer;
 - (ii) whether the aquifer is confined or unconfined;
 - (iii) effective hydraulic conductivity;
 - (iv) transmissivity; and

(v) the estimated flow direction or directions of groundwater and the rate of movement.

(d) the locations of surface waters within the area described in subsection (2)(a) and within the closed basin that are subject to an appropriation right including but not limited to springs, creeks, streams, or rivers that are affected or could be affected;

(e) the locations of all wells or other sources of ground water of record within the area affected;

(f) the location of existing documented hazards that could be affected or exacerbated by the project, such as landslide prone areas or areas of subsidence along with a plan to mitigate any conditions or impacts;

(g) the chemical and physical composition of the source water or waters and any water quality impacts that may occur;

(h) other water quality information necessary to comply with [section 16] and to determine any cumulative impacts based on the impacts of the proposed project when considered in association with projects or discharges that are already permitted; and

(i) a description of any water treatment method that will be used at the time of any type of injection or introduction of water to the aquifer to ensure compliance with [section 16] and the water quality act provided for in Title 75, chapter 5.

(3) (a) The hydrogeologic assessment, as defined in [section 17], model, test well data, monitoring well data, and other related information must be submitted to the department and the

bureau of mines and geology.

(b) The bureau of mines and geology shall examine the data and provide feedback to the department regarding the adequacy of the analysis. If the bureau of mines and geology supports the adequacy of the analysis, the department shall accept it as adequate.

(c) The bureau of mines and geology shall ensure that information submitted pursuant to this section is entered into the ground water information system and the ground water assessment program.

NEW SECTION. **Section 18. Monitoring requirements.** (1) A monitoring plan that is included as part of a mitigation plan or an aquifer recharge plan for the purpose of evaluating and verifying the assumptions of a mitigation plan or aquifer recharge plan must:

(a) include proposed time intervals for sampling and subsequent reporting not to exceed once every 6 months;

(b) include data necessary to evaluate the effectiveness of the mitigation plan or aquifer recharge plan with regard to adverse affect to prior appropriators;

(c) include descriptions of measurement methodology, threshold values, and evaluation techniques;

(d) include collection of data necessary to determine compliance with water quality standards and other water quality related requirements established pursuant to [section 16]; and

(e) incorporate the use of best available technology

including the use of computer generated water models.

(2) (a) Except as provided in subsection (2)(b), all monitoring that is required by a monitoring plan must be conducted by an independent licensed professional engineer or scientist.

(b) If the monitoring is being conducted on surface water flow and the stream reach is subject to a court ordered enforcement action the water commissioner may provide the stream flow measurements.

(3) Monitoring must continue for at least five years after a final permit is issued.

(4) All data and other related information collected through a monitoring program must be submitted to the department and the bureau of mines and geology. The bureau of mines and geology shall ensure that information submitted pursuant to this section is entered into the ground water information system and the ground water assessment program.

(5) (a) If, at the end of the five year monitoring plan, it is determined that the mitigation plan or aquifer recharge plan is does not offset adverse affect on a prior appropriator, the applicant shall evaluate the feasability of putting the new appropriation right or change in appropriation right to beneficial use without adversely affecting a prior appropriator.

(b) If the department determines, based on an updated hydrogeologic assessment, as defined in [section 17], that a revised mitigation plan or aquifer recharge plan can offset any adverse affects to a prior appropriator the conditional permit

must remain in effect. The revised mitigation plan or aquifer recharge plan must address the deficiencies of the initial mitigation plan or aquifer recharge plan. Except as provided in subsection (6), the provisions of this section apply to a revised plan.

(c) If the department determines, based on an updated hydrogeologic assessment, as defined in [section 17], that a revised mitigation plan or aquifer recharge plan cannot offset any adverse affects the conditional permit must be terminated.

(6) After the five year monitoring and one extension, if a mitigation or aquifer recharge plan has not offset the affects to prior appropriators the conditional permit must be terminated.

NEW SECTION. Section 19. Previously approved augmentation plans. (1) Except as provided in 85-2-337 for the Clark Fork basin, augmentation plans, mitigation plans, or aquifer recharge plans have not been statutorily recognized prior to [the effective date of this act]. Any water permit issued prior to [the effective date of this act] that was based on conditions that were only available in the Clark Fork basin pursuant to 85-2-337 must meet the requirements of [sections 14 through 21].

(2) An augmentation plan, mitigation plan, or aquifer recharge plan that was approved to offset adverse affects and the new appropriation right or a change in appropriation right did not result in the water being used for human consumption must be granted a conditional permit and is subject to the provisions of [section 14].

(3) An augmentation plan, mitigation plan, or aquifer recharge plan that was approved to offset adverse affects for a new appropriation right or a change in appropriation right that resulted in water being used for human consumption must be evaluated to ensure the hydrogeologic assessment, as defined in [section 17], mitigation plan or aquifer recharge plan, and monitoring plan meet the requirements of [sections 14 through 21]. Because of the potential risk to human health, if the augmentation plan, mitigation plan, or aquifer recharge plan do not meet the requirements of [sections 14 through 21] operation of the new or changed appropriation right must cease and the water may not be appropriated until the requirements of [sections 14 through 21] have been met and the plan, if necessary, is approved by the department. Failure to cease operation shall result in a daily fine not to exceed \$1000 for each day in violation.

(4) Once a new appropriation right or change in appropriation right complies with the requirements of [sections 1 through 21], the priority date for a new appropriation right subject to this section is the date of the initial application to the department.

NEW SECTION. **Section 20. Aquifer testing, test well, or monitoring well data submission.** All aquifer testing data and other related information from test wells, monitoring wells, or other sources that is collected for the purpose of obtaining a new appropriation right or a change in appropriation right must

be submitted to the department and the bureau of mines and geology in a form prescribed by the bureau of mines and geology. The bureau of mines and geology shall ensure that information submitted pursuant to this section is entered into the ground water information system and the ground water assessment program.

NEW SECTION. **Section 21. Rulemaking.** The department may adopt rules to implement the provisions of [sections 14 through 18]. The rules must be consistent with the requirements of [sections 14 through 21].

NEW SECTION. **Section 22. Closed basin case study.** (1) The Montana bureau of mines and geology, provided for in 20-25-211, shall conduct a case study to gather and develop data to determine the adequacy of minimum standards and criteria for hydrogeologic assessments, as defined in [section 17], associated with ground water withdrawals and the range of impacts of those withdrawals on surface water and ground water resources. The department of natural resources and conservation shall coordinate with the bureau of mines and geology for surface water monitoring and other elements of the case study as necessary.

(2) The case study must be conducted in basins closed pursuant to sections 85-2-330, 85-2-337, 85-2-341, 85-2-343, or 85-2-344. The bureau of mines and geology shall ensure that at every site involved in the case study the following, at a minimum is accomplished to provide the necessary scientific data and information to policy makers:

(a) an appropriate number of monitoring wells are drilled or available at each case study site to provide scientifically defensible data;

(b) aquifer testing and recovery testing is conducted at each site;

(c) water quality samples are collected from each pumping or primary well at the beginning of the case study and at the end of the case study;

(d) if information or data has already been collected for a particular site, the bureau of mines and geology shall review, analyze, and verify that information;

(e) if a site that is involved in the case study has an established system, monitor the established system under its current or planned operating conditions; and

(f) any other information that the bureau of mines and geology determines is necessary to determine minimum standards and criteria for hydrogeologic assessments, as defined in [section 17], associated with ground water withdrawals and the range of impacts those withdrawals have on surface water and ground water resources.

(3) In addition to the requirements of subsection (2), the bureau of mines and geology shall develop a system to compile existing aquifer testing data as well as data resulting from hydrogeologic assessments, as defined in [section 17], and monitoring activities.

(4) The department of natural resources and conservation shall coordinate with the bureau of mines and geology to provide

surface water measurement to determine impacts, if any, to surface water resources when a well located at a case study site is pumped.

(5) The bureau of mines and geology shall:

(a) provide updates to the appropriate interim legislative committee through out the interim related to the progress of the case study, data trends, if any, and other information necessary to assist the interim legislative committee in developing any necessary policy recommendations;

(b) upon request, provide updates to the ground water assessment steering committee provided for in 2-15-1523; and

(c) submit a report to the appropriate interim legislative committee and the 61st legislature providing detailed analysis of the results of the case study.

NEW SECTION. Section 23. Case study -- requirements for participation. (1)(a) Up to a maximum of 10 sites may be included in the case study provided for in [section 21]. If there are more than 10 entities wishing to participate in the case study the bureau of mines and geology shall select participants to ensure that to the extent possible each closed basin is represented and as many different scenarios are represented as necessary to ensure a scientifically accurate analysis.

(b) If there are not ten entities wishing to participate or if there is a scenario that is not represented by case study participants that is necessary to ensure a scientifically

accurate analysis, the bureau of mines and geology may request cooperation and participation from entities that hold appropriation rights for wells within closed basins.

(c) Entities that had an application pending with the department on April 11, 2006, for a beneficial use that does not result in human consumption, must be given the option to participate in the case study before accepting other requests for participation.

(2) The bureau of mines and geology in cooperation with the appropriate interim legislative committee shall notify, in writing, each of the entities described in subsection (1)(c), of the opportunity to and requirements for participation in the case study.

(3) To participate in the case study, a participant must agree:

(a) that the use of a ground water well in accordance with the application that resulted in a conditional permit pursuant to [section 14] does not grant or give the participant an appropriation right;

(b) to allow monitoring wells and must allow access for monitoring and review purposes;

(c) if monitoring or test wells exist at the site to allow the bureau of mines and geology access to those wells for monitoring and review purposes;

(d) to allow for the measurement of pumping at the primary pumping well including any plumbing requirements necessary to ensure an accurate analysis of pumping records and of the

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impacts, if any, resulting from pumping of the well; and

(e) that the participant is responsible for costs associated with drilling the primary pumping well, maintenance associated with the well, and other costs reasonably related to the normal operation of a pumping well in the absence of the case study.

NEW SECTION. **Section 24. Appropriation.** There is appropriated \$250,000 to the Montana bureau of mines and geology for the biennium beginning July 1, 2007 for the purpose of conducting a case study in coordination with the department of natural resources and conservation to gather and develop data to determine minimum standards and criteria for hydrogeologic assessments, as defined in [section 17], associated with ground water withdrawals and the impacts of those withdrawals on surface water and ground water resources.

NEW SECTION. **Section 25. Applicability.** [Sections 1 through 18] and [sections 20 through 24] apply to applications for an appropriation right or change in appropriation right in a closed basin pending or filed on or after [the effective date of this act].

NEW SECTION. **Section 26. {standard} Codification instruction.** [Sections 14 through 21] are intended to be codified as an integral part of Title 85, chapter 2, part 3, and the provisions of Title 85, chapter 2, part 3, apply to [sections 14

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through 21].

NEW SECTION. **Section 27. {standard} Effective date.** [This
act] is effective on passage and approval.

- END -

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